

**DEPARTMENT OF STATE
RECORD OF DECISION AND NATIONAL INTEREST
DETERMINATION**

NuStar Logistics, L.P., Application for Presidential Permit, New Burgos Pipeline

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1.0 Summary

On December 18, 2014, NuStar Logistics, L.P. (NuStar) submitted an application to the Department of State (Department) for a Presidential permit that would authorize the construction, connection, operation, and maintenance of pipeline facilities at the U.S.-Mexico border near Peñitas, TX to export and import certain refined petroleum products¹ between the United States and Mexico (New Burgos Pipeline or the proposed Project). If approved, the New Burgos Pipeline would consist of a 10-inch outer diameter pipeline that would run parallel to another existing pipeline operated by NuStar that would also connect the Petroleos Mexicanos (PEMEX) Burgos Gas Plant near Reynosa, Tamaulipas, Mexico and the NuStar terminal near Edinburg, Texas. The U.S. portion of New Burgos Pipeline would consist of approximately 34 miles of pipeline running from a location on the Rio Grande southeast of Peñitas, Texas to the NuStar terminal approximately six miles north of downtown Edinburg, Texas. The Mexican portion would consist of approximately 12.5 miles of pipeline, south of the Rio Grande crossing, terminating at the PEMEX Burgos Gas Plant, near Reynosa, Tamaulipas, Mexico. If issued, the permit would authorize operations at the border segment, which is from the Rio Grande to the first mainline shut-off valve within the United States located approximately 1.6 miles from the Rio Grande. The proposed Project would have the capacity to deliver up to 108,000 barrels per day (bpd) of refined petroleum products, to include naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, and diesel. In addition, NuStar proposes to construct a new meter and pump station within its Edinburg, Texas terminal as appurtenant facilities to the pipeline. NuStar has requested that the Presidential permit authorize transport of refined petroleum products in either direction.

Executive Order 13337 (April 30, 2004) delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels (except for natural gas) at the borders of the United States and to issue or deny such Presidential permits upon a national interest determination. Those functions and authorities assigned to the Secretary have been further delegated within the Department to several officials, including to the Under Secretary for Economic Growth, Energy, and the Environment (Department of State Delegation of Authority No. 118-2), and the Acting Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs (Department of State Delegation of Authority No. 415).

The determination is Presidential action, made through the exercise of Presidentially delegated authorities, and therefore the requirements of the National Environmental Policy Act of 1969 (NEPA), the National Historic Preservation Act of 1966 (NHPA), the Endangered Species Act of 1973 (ESA), the Administrative Procedure Act (APA), and other similar laws and regulations

¹ For purposes of the proposed Project, the term "refined petroleum product" means any petroleum product that by American Society for Testing Materials test methods substantially distills below 700 degrees Fahrenheit (°F), has a Reid vapor pressure not exceeding 28 pounds at 100°F, and has a color not darker than No. 3. Refined petroleum products could generally include individual volatile aromatic compounds that make up the constituents of gasoline such as benzene, toluene, ethylbenzene, and xylene (BTX), as well as L.P.G, regular and premium gasoline, kerosene, and diesel.

that do not apply to Presidential actions are also inapplicable here. Nevertheless, the Department's review of the Presidential permit application for the proposed Project has, as a matter of policy, been conducted in a manner consistent with NEPA, the NHPA, and the ESA. The Department published a Final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) in June 2016. In the Final EA, the Department analyzed the potential environmental and social impacts associated with issuing or denying a Presidential permit. The Department solicited public comment and coordinated with state, local, and tribal governments and other federal agencies as it considered NuStar's application.

Acting on behalf of the President of the United States under delegated authorities in accordance with Executive Order 13337, and following an evaluation of the proposed Project, I have determined that issuing a Presidential permit to NuStar to construct, connect, operate, and maintain at the border of the United States pipeline facilities for the transport of refined petroleum products between Mexico and the United States as described in the December 18, 2014 Presidential permit application for the proposed Project would serve the national interest. Accordingly, the request for a Presidential permit is approved.

2.0 Legal Authority

The President of the United States has authority to require permits for transboundary infrastructure projects, based upon his Constitutional powers. In Executive Order 13337, acting pursuant to the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, the President delegated to the Secretary of State the authority to receive applications and make a determination regarding approval or denial of a Presidential permit for certain types of border facilities, including those for cross-border petroleum pipelines, based on the Secretary's finding as to whether issuance of a permit would serve the national interest. Because the proposed Project seeks to transport refined petroleum products across the international border through a new petroleum pipeline, the authority to make a determination for the issuance of a Presidential permit for the border facilities falls within the authority delegated to the Secretary of State by the President. The functions assigned to the Secretary have been further delegated within the Department of State to the Deputy Secretary of State, the Deputy Secretary of State for Management and Resources, the Under Secretary of State for Political Affairs, the Under Secretary of State for Economic Growth, Energy, and the Environment, and the Acting Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs (Department of State Delegations of Authority Nos. 245-1, 118-2, 415). Once the Secretary, or his delegate, makes a proposed determination on behalf of the President pursuant to Executive Order 13337, any of the Cabinet-level officials of the eight agencies named by the President in the Executive Order may indicate disagreement with it and request that the Secretary refer the application to the President. The Secretary's determination on behalf of the President stands and the Presidential permit is issued or denied consistent with that decision if none of the Cabinet-level officials chooses to refer the application to the President.

As noted above, when reviewing an application for a Presidential permit, the Secretary is required by the Executive Order to determine if issuance of the permit would serve the national interest. The determination is made pursuant to the President's Constitutional authority. No statute establishes criteria for this determination. The President, the Secretary or his delegate

may take into account factors he or she deems germane to the national interest. With regard to the proposed Project, the Acting Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs has considered a range of factors, including but not limited to foreign policy; energy security; environmental, cultural, and economic impacts; and compliance with applicable law and policy. The determination is Presidential action, made through the exercise of Presidentially delegated authorities, and therefore the requirements of NEPA, the ESA, the NIIPA, the APA, and other similar laws and regulations that do not apply to Presidential actions are also inapplicable here. Nevertheless, as a matter of policy and in order to inform the Acting Assistant Secretary's determination regarding the national interest, the Department has reviewed the potential impacts of the action on the human and natural environments in a manner consistent, where appropriate, with these statutes.

3.0 Agency and Tribal Involvement and Public Comment

During its consideration of NuStar's application for a Presidential permit, the Department conducted public outreach and contacted potentially interest tribes during the environmental review process. Additionally, the Department sought views of other federal agencies as required by Executive Order 13337. The public notice, outreach, and consultation efforts during consideration of NuStar's application are further detailed below. The Acting Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs has taken all comments and relevant information into account in making the national interest determination.

3.1 Public Notice: Upon receipt of NuStar's application, the Department published in the Federal Register a Notice of Receipt (80 FR 10745, February 27, 2015). At that time, the Department provided project updates on a website linked to the Department's Bureau of Energy Resource's website.

3.2 Public Comment Periods: On June 25, 2015, the Department published a notice in the Federal Register informing the public that it intended to prepare an EA (80 FR 36579), and soliciting public comments during a 30 day scoping period. The Department received no comments during the scoping period.

On May 9, 2016, the Department released a Draft EA and a Preliminary FONSI for the NuStar Burgos Pipeline Presidential Permit Application Review. Both documents were posted on the Department's website for the proposed Project. At the same time, the Department published a notice of availability in the Federal Register inviting federal, state, and local government agencies; Indian tribes; and members of the public to comment during a 30-day public comment period on the Draft EA and Preliminary FONSI (81 FR 28114). A notice was also published in the local Texas newspaper, *The Monitor*, announcing the release of the Draft EA and identifying locations where the Draft EA could be reviewed. The Department received one comment from the United States Fish and Wildlife Service on the environmental review of maintenance operation. The Department considered and addressed this comment in the Final EA. The Department received no public comments on the Draft EA and Preliminary FONSI. The Department published a Final EA and a FONSI in June 2016, and published a notice of availability in the Federal Register of the Final EA and FONSI (81 FR 39313, June 16, 2016). The Department also solicited comments on the proposed national interest determination from

members of the public during a 30-day public comment period announced in the Federal Register on July 14, 2016 (81 FR 45592). The Department did not receive any comments from members of the public on the national interest determination.

3.3 Tribal Consultation: On April 16, 2015, the Department sent consultation letters to 27 Indian tribes with a current or historic presence in Texas to notify them of the New Burgos Pipeline application and to offer consultations with the Department at any point in the review process. The Department provided copies of the Draft EA to all interested Indian tribes for review and comment, and received responses from two tribes, both of which had no comments on the environmental review.

3.4 Consultation with Federal and State Agencies: Pursuant to Executive Order 13337, the Department solicits input from nine specified federal agencies during its review of Presidential permit applications for proposed projects that cross the U.S.-Mexico border: the Departments of Defense (DOD), Justice, Interior (DOI), Commerce, Transportation (DOT), Energy, and Homeland Security, the Environmental Protection Agency, and the U.S. Section of the International Boundary and Water Commission. The Department received responses from three agencies, the DOD, the Pipeline and Hazardous Materials Safety Administration (PHMSA) on behalf of DOT, and the DOI. DOD and PHMSA stated they had no comments and no objections to the permit application.

The Department distributed the Preliminary FONSI and Draft EA to other federal, state, and local government agencies for review during the public comment period. The Department also consulted with the Texas Historical Commission to ensure that cultural resource issues were appropriately addressed.

3.5 Information Provided by NuStar: NuStar provided information on the project in its application. The company also responded to multiple data requests for information during development of the EA. The Acting Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs has taken all information provided by NuStar into account in making the national interest determination.

4.0 Project Background

4.1 Applicant: NuStar is a limited partnership formed under the laws of the State of Delaware with its primary place of business in San Antonio, Texas. NuStar is a subsidiary of NuStar Energy L.P., which is a publicly traded master limited partnership based in San Antonio, Texas and is one of the largest independent liquids terminal and pipeline operators in the United States. As of the date of its application, NuStar had 8,643 miles of pipeline and 82 terminal and storage facilities that stored and distributed crude oil, refined products, and specialty liquids and its system had approximately 91 million barrels of storage capacity.

4.2 New Burgos Pipeline Project: The New Burgos Pipeline would consist of a new 10-inch outer diameter pipeline designed to transport refined petroleum products from the NuStar terminal near Edinburg, Texas to the PEMEX Burgos Gas Plant near Reynosa, Tamaulipas, Mexico, a distance of approximately 46.5 miles. The proposed 10-inch diameter pipeline will

have a capacity to transport up to 108,000 bpd of refined petroleum products, to include naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, and diesel.

If approved, the pipeline would cross the U.S.-Mexico border approximately three miles southeast of Peñitas, Texas. The U.S. portion of New Burgos Pipeline would consist of approximately 34 miles of pipeline running from a location on the Rio Grande southeast of Peñitas, Texas to the NuStar terminal approximately six miles north of downtown Edinburg, Texas. Approximately 70 percent of the proposed Project is located in the United States. The border segment is from the Rio Grande to the first mainline shut-off valve within the United States, which is located approximately 1.6 miles from the Rio Grande.

As the Final EA explains, the New Burgos Pipeline will use the same right-of-way (ROW) as another NuStar-operated pipeline, the Existing Burgos Pipeline, which was constructed and placed into operation in 2007. The border crossing is located on pasture land typical of the area and is primarily rural and agricultural land. At the border, the pipeline would be buried to a minimum depth of three feet along the right of way, and to a depth that is 30 feet below the river bottom at the crossing of the Rio Grande. During installation of the pipeline, NuStar proposes to use a construction easement that would be 70 feet in width, which includes the existing 30-foot permanent operational ROW within which the Existing Burgos Pipeline is centered and an additional 20-foot temporary ROW on either side for construction activities. NuStar has indicated it will install the new pipeline at a safe operating distance from its existing pipeline in accordance with relevant federal regulations and guidelines. Although no major population center is located near the border segment, approximately 450 residences are located within 2,500 feet of the current ROW centerline.

The Mexican portion consists of approximately 12.5 miles of pipeline, south of the Rio Grande crossing, terminating at the PEMEX Burgos Gas Plant, near Reynosa, Tamaulipas, Mexico. NuStar is not proposing the construction of any other appurtenant facilities in Mexico at this time.

According to the application submitted by NuStar, the primary purpose of the proposed Project would be to transport a broad range of refined petroleum products to provide flexibility for market demands in Northeast Mexico. In particular, NuStar has indicated that there is a demand for petroleum products in the areas of Northeast Mexico, particularly in the areas of Reynosa, Tamaulipas, and Cadereyta, Jimenez. NuStar has reported that LPG, regular and premium gasoline, kerosene, and diesel are the most likely products to be transported via pipeline and sold in the Mexican marketplace. LPG, regular and premium gasoline, kerosene, and diesel were therefore the products focused on in the EA.

NuStar has also requested that the Presidential permit authorize bidirectional flow of products through the pipeline, which NuStar states will increase efficiency and reduce potential impacts to human health and the environment. NuStar states that this change would reduce air pollution resulting from emissions, eliminate a source of traffic congestion at border crossings, and reduce the number of commercial truck crossings.

5.0 Issues Considered in the Final Environmental Assessment and Finding of No

Significant Impact

5.1 Analysis of Potential Impacts: This Record of Decision and National Interest Determination is informed by the Final EA prepared by the Department and published in June 2016, and FONSI, signed June 10, 2016, which identified and analyzed potential impacts of the proposed Project. The Department analyzed the potential effects of transporting a broad range of refined petroleum products through the New Burgos Pipeline. Based upon a review of the EA, the proposed Project would not significantly affect the quality of the human or natural environments, individually or cumulatively with other actions in the general area. This finding is based on the context and low intensity of the Project, as well as the resource protection measures to be adopted by NuStar, as summarized below and in the EA.

As compared to the No Action Alternative, the authorization for the construction, connection, operation, and maintenance of new border facilities for the transport of refined petroleum products:

- Would not increase adverse effects to land use or recreation;
- Would not increase adverse effects on the region's air quality;
- Would not increase significant emissions of greenhouse gases;
- Would not increase noise associated with operation of the pipeline and terminals;
- Would not increase soil disturbance beyond normal maintenance and operation;
- Would not increase effects on water resources beyond normal maintenance and operation;
- Would not impact floodplains;
- Would not significantly affect wildlife or threatened and endangered species;
- Would not increase adverse effects to environmental justice populations;
- Would not impact historic or archaeological preservation; and
- Would not increase adverse effects to human health and safety.

There is some potential for environmental impacts from the new operation should an accidental or otherwise unexpected release from the pipeline occurs. However, these potential impacts are not significant because: 1) accidental releases are rare occurrences; 2) prompt implementation of NuStar's emergency response plan should mitigate effects; and 3) the effects of a potential release are not significantly different between the Proposed Action Alternative and the No Action Alternative.

5.2 Summary of Resource Protection Measures and Special Conditions: The Department's analyses of potential impacts associated with construction and normal operation of the proposed Project on most resources along the proposed Project corridor, and the associated findings, are premised on the following resource protection measures and special conditions that would be required of NuStar under a Presidential permit for this proposed Project:

- NuStar would construct, operate, and maintain the proposed Project as described in the EA and would comply with all applicable laws and regulations;
- NuStar would incorporate the resource protection measures and best management practices in impact avoidance measures listed in tables 2-2 and 7-2 of the EA into the

- construction, connection, operation, and maintenance of the proposed Project; and
- NuStar would submit all plans that are incomplete at the time of issuance of the EA to the Department for review and approval prior to beginning construction on the Project.

6.0 Basis for Decision

Acting on behalf of the President of the United States under delegated authority, the Acting Assistant Secretary for Oceans and International Environmental and Scientific Affairs has determined that it serves the national interest to issue a Presidential permit to NuStar Logistics, L.P. to construct, connect, operate, and maintain facilities at the border to transport refined petroleum products between the United States and Mexico, as described in the application for a Presidential permit dated December 18, 2014.

The determination to issue a Presidential permit for the proposed Project is based on consideration of a broad range of factors including but not limited to foreign policy; energy security; environmental, cultural, and economic impacts; and compliance with applicable law and policy. In particular, the Department finds that the issuance of the Presidential permit would have a number of benefits, including the following:

- **Maintain connections between U.S. and Mexican producers and refiners with markets for their refined petroleum products.** Currently, Mexico does not have robust refining capabilities for the products indicated in the proposed Project. The Department believes it is important to ensure adequate supplies of energy reach the global economy and to help manage geopolitical changes arising from shifting patterns of energy production and consumption and to continue to further integrate energy markets. The broad range of refined petroleum products requested by NuStar for transportation in the New Burgos Pipeline would provide market access for refined petroleum products to a region that currently lacks the necessary infrastructure, and provide additional markets for U.S. suppliers, producers, equipment manufacturers, and other components of the industry.
- **Strengthen the bilateral relationship and advance the economic and foreign policy interests of the United States.** The New Burgos Pipeline would help expand a stable and friendly export marketplace and a refined petroleum product consumer with which the United States has close, longstanding, and strong economic ties. The United States and Mexico have one of the largest and most integrated bilateral trading partnerships in the world, which totaled over \$579.61 billion in two-way goods and services trade in 2016, making Mexico the third largest trading partner of the United States. Further, the U.S.-Mexico energy relationship remains strong. Founded on a robust and growing energy trade, the Department recognizes that a closer bilateral energy relationship provides opportunities for U.S. business and for greater governmental cooperation. The United States values this relationship and appreciates the shared benefit derived from our common energy market. Approval of this permit will send a positive signal about the future reliability and availability of United States' energy imports and exports to Mexico, which will advance U.S. energy and foreign policy goals.

- **The issuance of the permit would not have significant impacts on the price of refined petroleum products.** The proposed change of products for transport in the New Burgos Pipeline, which at 108,000 barrels per day equals 0.006 percent of U.S. petroleum product consumption, will have no measurable impact on U.S. energy security. Because oil trade is global in nature, the United States will remain integrated with international oil markets and unhindered by NuStar's proposed changes which would, allow for a broader mix of refined petroleum products to be exported from, as well as imported into, the United States. Oil trade is driven by commercial considerations and occurs in the context of a global market in which crude oil and refined petroleum products are relatively fungible. The market continually adjusts both in terms of price to balance global supply and demand and market players adjusting their logistics and infrastructure. As a result, U.S. exports of such volumes as NuStar intends to transport would have a negligible, if any, impact on the prices U.S. consumers pay for refined products.

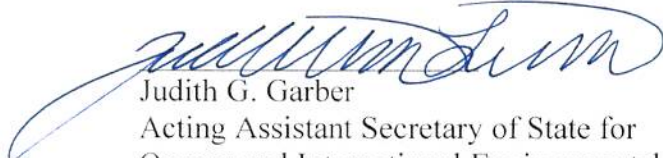
7.0 National Interest Determination

Pursuant to the authority vested in me under Executive Order 13337 of April 30, 2004, Department of State Delegation of Authority No. 118-2 of January 26, 2006, and Department of State Delegation of Authority No. 415 of January 17, 2017, and subject to satisfaction of the requirements of sections 1(g) and 1(i) of Executive Order 13337, I hereby determine that issuance of a permit to NuStar Logistics L.P., a limited partnership formed under the laws of the State of Delaware, to operate and maintain facilities at the border of the United States and Mexico for the transport of refined petroleum products between the United States and Mexico across the international boundary in Hidalgo County, Texas, would serve the national interest.

The Presidential permit issued to NuStar shall include authorizations to construct, connect, operate, and maintain facilities at the border of the United States for the transport of refined petroleum products between Mexico and the United States as described in the Presidential permit application dated December 18, 2014. No actions shall be taken by NuStar pursuant to this authorization prior to NuStar's acquisition of all other necessary federal, state, and local permits and approvals from agencies of competent jurisdiction.

The Secretaries of Defense, Interior, Commerce, Energy, Homeland Security, and Transportation, the Attorney General, the Administrator of the Environmental Protection Agency, and the U.S. Section of the International Boundary and Water Commission will be notified of this determination, and the determination will be final unless further consultations are required or the matter must be referred to the President for consideration and final decision pursuant to section 1(i) of said Executive Order.

5/31/17
Date


Judith G. Garber
Acting Assistant Secretary of State for
Oceans and International Environmental and
Scientific Affairs

Approved: ENR – Mary Burce Warlick, Acting

Drafted: ENR/EGA/PAPD: Marcus Lee, ext. 5-1522 and (202) 425-2286

Cleared: ENR/FO: Samantha Carl-Yoder (info)
ENR/EGA/PAPD: Matt McManus (ok)
ENR/EDP: Erik Ryan (ok)
OES/EQT: Jill Reilly (ok)
OES/EQT: Mary Hassell (ok)
L/EB: Michael Aktipis (ok)
I/OES: Ted Kill (ok)
WHA/MEX: Hillary Quam (ok)
E: Kate Rebholz (info by request)
P: Joshua Cartin (ok)
D: (info)
S(P): (info)